

SUBSTITUTE FOR
HOUSE BILL NO. 4402

A bill to amend 1976 PA 451, entitled
"The revised school code,"
by amending sections 1230 and 1230a (MCL 380.1230 and 380.1230a),
section 1230 as amended by 1993 PA 284 and section 1230a as added
by 1995 PA 83, and by adding section 1230c.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1230. (1) ~~Beginning with hiring for the 1993-94 school~~
2 ~~year and subject to subsections (2), (4), and (5)~~ **EXCEPT AS**
3 **OTHERWISE PROVIDED IN THIS SECTION**, upon an offer of initial
4 employment being made by the board of a school district ~~—, local~~
5 ~~aet school district,~~ or intermediate school district or the
6 governing body of a public school academy or nonpublic school to an
7 individual for ~~a position as a teacher or a school administrator~~

~~or for a position requiring state board approval~~ **ANY FULL-TIME OR PART-TIME EMPLOYMENT OR WHEN SCHOOL OFFICIALS LEARN THAT AN INDIVIDUAL IS BEING ASSIGNED TO REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT IN ANY OF ITS SCHOOLS**, the district, public school academy, or nonpublic school shall request from the criminal records division of the department of state police a criminal history check on the individual and, before employing the individual as a regular employee **OR ALLOWING THE INDIVIDUAL TO REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT IN ANY OF ITS SCHOOLS**, shall have received from the department of state police the report described in subsection (8).

(2) If the board of a school district ~~—, local act school district,~~ or intermediate school district or the governing body of a public school academy or nonpublic school determines it necessary to ~~employ~~ **HIRE** an individual ~~for a position described in subsection (1)~~ for a particular school year during that school year or within 30 days before the beginning of that school year, the board or governing body may employ the individual as a conditional employee under this subsection without first receiving the report described in subsection (8) if all of the following apply:

(a) The board or governing body requests the criminal history check required under subsection (1) before conditionally employing the individual.

(b) The individual signs a statement ~~that identifies~~ **IDENTIFYING** all crimes for which he or she has been convicted, if any, and agreeing that, if the report described in subsection (8)

1 is not the same as the individual's statement, his or her
2 employment contract ~~will be~~ **IS** voidable at the option of the
3 board or governing body. ~~Not later than July 28, 1993, the~~ **THE**
4 department shall develop and distribute to districts and nonpublic
5 schools a model form for the statement required under this
6 subdivision. The department shall make the model form available to
7 public school academies. A district, public school academy, or
8 nonpublic school shall use the model form for the purposes of this
9 subsection.

10 (3) If an individual is employed as a conditional employee
11 under subsection (2) and the report described in subsection (8) is
12 not the same as the individual's statement under subsection (2),
13 the board or governing body may void the individual's employment
14 contract. If an employment contract is voided under this
15 subsection, the individual's employment is terminated, a collective
16 bargaining agreement that would otherwise apply to the individual's
17 employment does not apply to the termination, and the district,
18 public school academy, or nonpublic school or the board or
19 governing body is not liable for the termination.

20 (4) For an applicant for a position as a substitute teacher,
21 instead of requesting a criminal history check under subsection
22 (1), a school district, ~~local act school district,~~ intermediate
23 school district, public school academy, or nonpublic school may use
24 a report received by another district, public school academy, or
25 nonpublic school or maintained by the department to confirm that
26 the individual does not have any criminal history. If that
27 confirmation is not available, subsection (1) applies to ~~an~~ **THE**

1 applicant. ~~for a position as a substitute teacher.~~

2 (5) If an applicant ~~for a position described in subsection~~
3 ~~(1)~~ is being considered for employment ~~in such a position~~ by
4 more than 1 school district, ~~local act school district,~~
5 intermediate school district, public school academy, or nonpublic
6 school and if the applicant agrees in writing to allow a district,
7 public school academy, or nonpublic school to share the report
8 described in subsection (8) with another district, public school
9 academy, or nonpublic school, a district, public school academy, or
10 nonpublic school may satisfy the requirements of subsection (1) by
11 obtaining a copy of the report described in subsection (8) from
12 another district, public school academy, or nonpublic school.

13 (6) An applicant for ~~a position described in subsection (1)~~
14 **EMPLOYMENT** shall give written consent at the time of application
15 for the criminal records division of the department of state police
16 to conduct the criminal history check required under this section.

17 (7) A school district, ~~local act school district,~~
18 intermediate school district, public school academy, or nonpublic
19 school shall make a request to the criminal records division of the
20 department of state police for a criminal history check required
21 under this section on a form and in a manner prescribed by the
22 criminal records division of the department of state police.

23 (8) Within 30 days after receiving a proper request by a
24 school district, ~~local act school district,~~ intermediate school
25 district, public school academy, or nonpublic school for a criminal
26 history check on an ~~applicant~~ **INDIVIDUAL** under this section, the
27 criminal records division of the department of state police shall

1 conduct the criminal history check and, after conducting the
2 criminal history check and within that time period, provide a
3 report of the results of the criminal history check to the
4 district, public school academy, or nonpublic school. The report
5 shall contain any criminal history record information on the
6 ~~applicant~~ **INDIVIDUAL** maintained by the criminal records division
7 of the department of state police.

8 **(9) IF THE REPORT RECEIVED BY A SCHOOL DISTRICT, INTERMEDIATE**
9 **SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL UNDER**
10 **SUBSECTION (8) DISCLOSES THAT AN INDIVIDUAL HAS BEEN CONVICTED OF A**
11 **LISTED OFFENSE, THEN THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL**
12 **DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL SHALL NOT**
13 **EMPLOY THE INDIVIDUAL IN ANY CAPACITY, AS PROVIDED UNDER SECTION**
14 **1230C, AND SHALL NOT ALLOW THE INDIVIDUAL TO REGULARLY AND**
15 **CONTINUOUSLY WORK UNDER CONTRACT IN ANY OF ITS SCHOOLS. IF THE**
16 **REPORT RECEIVED BY A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT,**
17 **PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL UNDER SUBSECTION (8)**
18 **DISCLOSES THAT AN INDIVIDUAL HAS BEEN CONVICTED OF A FELONY OTHER**
19 **THAN A LISTED OFFENSE, THEN THE SCHOOL DISTRICT, INTERMEDIATE**
20 **SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL SHALL**
21 **NOT EMPLOY THE INDIVIDUAL IN ANY CAPACITY OR ALLOW THE INDIVIDUAL**
22 **TO REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT IN ANY OF ITS**
23 **SCHOOLS UNLESS THE SUPERINTENDENT OR CHIEF ADMINISTRATOR AND THE**
24 **BOARD OR GOVERNING BODY OF THE SCHOOL DISTRICT, INTERMEDIATE SCHOOL**
25 **DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL EACH**
26 **SPECIFICALLY APPROVE THE EMPLOYMENT OR WORK ASSIGNMENT. AS USED IN**
27 **THIS SUBSECTION, "LISTED OFFENSE" MEANS THAT TERM AS DEFINED IN**

1 **SECTION 2 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL**
2 **28.722.**

3 **(10) —(9)—** Criminal history record information received from
4 the criminal records division of the department of state police
5 under subsection (8) shall be used by a school district, local act
6 school district, intermediate school district, public school
7 academy, or nonpublic school only for the purpose of evaluating an
8 ~~applicant's~~ **INDIVIDUAL'S** qualifications for employment **OR**
9 **ASSIGNMENT** in the position for which he or she has applied **OR BEEN**
10 **ASSIGNED** and for the purposes of ~~subsection (3)~~ **SUBSECTIONS (3),**
11 **(4), AND (5).** A member of the board of a district or of the
12 governing body of a public school academy or nonpublic school or an
13 employee of a district, public school academy, or nonpublic school
14 shall not disclose the report or its contents, except any felony
15 conviction or a misdemeanor conviction involving sexual or physical
16 abuse, to any person who is not directly involved in evaluating the
17 applicant's qualifications for employment **OR ASSIGNMENT.** However,
18 for the purposes of ~~subsection (4)~~ **SUBSECTIONS (4) AND (5),** a
19 person described in this subsection may confirm to an employee of
20 another district, public school academy, or nonpublic school that a
21 report under subsection (8) has revealed that an individual does
22 not have any criminal history or may disclose that no report under
23 subsection (8) has been received concerning the individual, and for
24 the purposes of subsection (5), a person described in this
25 subsection may provide a copy of the report under subsection (8)
26 concerning the individual to an appropriate representative of
27 another district, public school academy, or nonpublic school. A

1 person who violates this subsection is guilty of a misdemeanor
 2 punishable by a fine of not more than \$10,000.00, but is not
 3 subject to the penalties under section 1804.

4 (11) ~~(10)~~ As used in this section, ~~:(a) "Criminal~~
 5 **"CRIMINAL** history record information" means that term as defined in
 6 section 1a of ~~Act No. 289 of the Public Acts of 1925, being~~
 7 ~~section 28.241a of the Michigan Compiled Laws~~ **1925 PA 289, MCL**
 8 **28.241A.**

9 ~~—— (b) "State board approval" means that term as defined in~~
 10 ~~section 1539b.~~

11 Sec. 1230a. (1) In addition to the criminal history check
 12 required under section 1230, the board of a school district ~~—~~
 13 ~~local act school district,~~ or intermediate school district or the
 14 governing body of a public school academy or nonpublic school shall
 15 request the department of state police to conduct a criminal
 16 records check through the federal bureau of investigation on an
 17 applicant for, or an individual who is hired for, ~~a position as a~~
 18 ~~teacher or a school administrator or a position requiring state~~
 19 ~~board approval~~ **ANY FULL-TIME OR PART-TIME EMPLOYMENT OR WHO IS**
 20 **ASSIGNED TO REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT IN ANY**
 21 **OF ITS SCHOOLS.** Except as **OTHERWISE** provided in ~~subsection (2)~~
 22 **THIS SECTION,** a board or governing body shall not employ an
 23 individual ~~in a position described in this subsection~~ **OR ALLOW AN**
 24 **INDIVIDUAL TO REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT IN ANY**
 25 **OF ITS SCHOOLS** until after the board or governing body receives the
 26 results of the criminal records check. A board or governing body
 27 requesting a criminal records check under this section shall

1 require the ~~applicant or~~ individual to submit his or her
2 fingerprints to the department of state police for that purpose.
3 The department of state police may charge a fee for conducting the
4 criminal records check. A board or governing body shall require an
5 individual to submit his or her fingerprints for the purposes of
6 this section only at the time the individual initially applies for
7 employment with the board or governing body or is initially
8 employed by the board or governing body **OR IS INITIALLY ASSIGNED TO**
9 **WORK UNDER CONTRACT IN ANY OF ITS SCHOOLS.**

10 (2) If the board of a school district ~~, local act school~~
11 ~~district,~~ or intermediate school district or the governing body of
12 a public school academy or nonpublic school determines it necessary
13 to ~~employ~~ **HIRE** an individual ~~for a position described in~~
14 ~~subsection (1)~~ for a particular school year during that school
15 year or within 30 days before the beginning of that school year,
16 the board or governing body may employ the individual as a
17 conditional employee under this subsection without first receiving
18 the results of the criminal records check under subsection (1) if
19 all of the following apply:

20 (a) The board or governing body requests the criminal records
21 check under subsection (1) before conditionally employing the
22 individual.

23 (b) The individual signs a statement ~~that identifies~~
24 **IDENTIFYING** all crimes for which he or she has been convicted, if
25 any, and agreeing that, if the results of the criminal records
26 check under subsection (1) reveal information that is inconsistent
27 with the individual's statement, his or her employment contract

1 ~~will be~~ **IS** voidable at the option of the board or governing body.
 2 ~~Not later than September 30, 1995, the~~ **THE** department shall
 3 develop and distribute to districts and nonpublic schools a model
 4 form for the statement required under this subdivision. The
 5 department shall make the model form available to public school
 6 academies. A district, public school academy, or nonpublic school
 7 shall use the model form for the purposes of this subsection.

8 (3) If an individual is employed as a conditional employee
 9 under subsection (2) and the results of the criminal records check
 10 under subsection (1) reveal information that is inconsistent with
 11 the individual's statement under subsection (2), the board or
 12 governing body may void the individual's employment contract. If an
 13 employment contract is voided under this subsection, the
 14 individual's employment is terminated, a collective bargaining
 15 agreement that would otherwise apply to the individual's employment
 16 does not apply to the termination, and the district, public school
 17 academy, or nonpublic school or the board or governing body is not
 18 liable for the termination.

19 (4) For an applicant for a position as a substitute teacher,
 20 instead of requesting a criminal records check under subsection
 21 (1), a school district, ~~local act school district,~~ intermediate
 22 school district, public school academy, or nonpublic school may use
 23 results received by another district, public school academy, or
 24 nonpublic school or maintained by the department to confirm that
 25 the individual does not have any criminal history. If that
 26 confirmation is not available, subsection (1) applies to ~~an~~ **THE**
 27 applicant. ~~for a position as a substitute teacher.~~

1 (5) If an applicant ~~for a position described in subsection~~
2 ~~(1)~~ is being considered for employment ~~in such a position~~ by
3 more than 1 school district, ~~local act school district,~~
4 intermediate school district, public school academy, or nonpublic
5 school and if the applicant agrees in writing to allow a district,
6 public school academy, or nonpublic school to share the results of
7 the criminal records check with another district, public school
8 academy, or nonpublic school, then a district, public school
9 academy, or nonpublic school may satisfy the requirements of
10 subsection (1) by obtaining a copy of the results of the criminal
11 records check from another district, public school academy, or
12 nonpublic school.

13 (6) An applicant for ~~a position described in subsection (1)~~
14 **EMPLOYMENT** shall give written consent at the time of application
15 for the criminal records division of the department of state police
16 to conduct the criminal records check required under this section.

17 (7) A school district, ~~local act school district,~~
18 intermediate school district, public school academy, or nonpublic
19 school shall make a request to the department of state police for a
20 criminal records check under this section on a form and in a manner
21 prescribed by the department of state police.

22 (8) The results of a criminal records check under this section
23 shall be used by a school district, ~~local act school district,~~
24 intermediate school district, public school academy, or nonpublic
25 school only for the purpose of evaluating an individual's
26 qualifications for employment **OR ASSIGNMENT** in the position for
27 which he or she has applied **OR BEEN ASSIGNED** and for the purposes

1 of subsections (3), (4), and (5). A member of the board of a
2 district or of the governing body of a public school academy or
3 nonpublic school or an employee of a district, public school
4 academy, or nonpublic school shall not disclose those results,
5 except any felony conviction or a misdemeanor conviction involving
6 sexual or physical abuse, to any person who is not directly
7 involved in evaluating the individual's qualifications for
8 employment **OR ASSIGNMENT**. However, for the purposes of subsections
9 (4) and (5), a person described in this subsection may provide a
10 copy of the results under subsection (1) concerning the individual
11 to an appropriate representative of another district, public school
12 academy, or nonpublic school. A person who violates this subsection
13 is guilty of a misdemeanor punishable by a fine of not more than
14 \$10,000.00, but is not subject to the penalties under section 1804.

15 (9) Within 30 days after receiving a proper request by a
16 school district, local act school district, intermediate school
17 district, public school academy, or nonpublic school for a criminal
18 records check on an individual under this section, the criminal
19 records division of the department of state police shall initiate
20 the criminal records check **THROUGH THE FEDERAL BUREAU OF**
21 **INVESTIGATION**. After conducting the criminal records check **REQUIRED**
22 **UNDER THIS SECTION** for a school district, ~~local act school~~
23 ~~district,~~ intermediate school district, or public school academy,
24 the criminal records division of the department of state police
25 shall provide the results of the criminal records check to the
26 district or public school academy. After conducting the criminal
27 records check **REQUIRED UNDER THIS SECTION** for a nonpublic school,

1 the criminal records division of the department of state police
2 shall notify the nonpublic school of whether or not the criminal
3 records check disclosed any criminal history that is not disclosed
4 in the report on the individual provided to the nonpublic school
5 under section 1230.

6 (10) ~~As used in this section, "state board approval" means~~
7 ~~that term as defined in section 1539b.~~ IF THE RESULTS RECEIVED BY
8 A SCHOOL DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL
9 ACADEMY, OR NONPUBLIC SCHOOL UNDER SUBSECTION (9) DISCLOSE THAT AN
10 INDIVIDUAL HAS BEEN CONVICTED OF A LISTED OFFENSE, THEN THE SCHOOL
11 DISTRICT, INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR
12 NONPUBLIC SCHOOL SHALL NOT EMPLOY THE INDIVIDUAL IN ANY CAPACITY,
13 AS PROVIDED UNDER SECTION 1230C, AND SHALL NOT ALLOW THE INDIVIDUAL
14 TO REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT IN ANY OF ITS
15 SCHOOLS. IF THE RESULTS RECEIVED BY A SCHOOL DISTRICT, INTERMEDIATE
16 SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL UNDER
17 SUBSECTION (9) DISCLOSE THAT AN INDIVIDUAL HAS BEEN CONVICTED OF A
18 FELONY OTHER THAN A LISTED OFFENSE, THEN THE SCHOOL DISTRICT,
19 INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC
20 SCHOOL SHALL NOT EMPLOY THE INDIVIDUAL IN ANY CAPACITY OR ALLOW THE
21 INDIVIDUAL TO REGULARLY AND CONTINUOUSLY WORK UNDER CONTRACT IN ANY
22 OF ITS SCHOOLS UNLESS THE SUPERINTENDENT OR CHIEF ADMINISTRATOR AND
23 THE BOARD OR GOVERNING BODY OF THE SCHOOL DISTRICT, INTERMEDIATE
24 SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC SCHOOL EACH
25 SPECIFICALLY APPROVE THE EMPLOYMENT OR WORK ASSIGNMENT. AS USED IN
26 THIS SUBSECTION, "LISTED OFFENSE" MEANS THAT TERM AS DEFINED IN
27 SECTION 2 OF THE SEX OFFENDERS REGISTRATION ACT, 1994 PA 295, MCL

1 28.722.

2 SEC. 1230C. (1) IF A SCHOOL OFFICIAL OF A SCHOOL DISTRICT,
3 INTERMEDIATE SCHOOL DISTRICT, PUBLIC SCHOOL ACADEMY, OR NONPUBLIC
4 SCHOOL HAS NOTICE THAT AN INDIVIDUAL HAS BEEN CONVICTED OF A LISTED
5 OFFENSE, THE BOARD OF THE SCHOOL DISTRICT OR INTERMEDIATE SCHOOL
6 DISTRICT, BOARD OF DIRECTORS OF THE PUBLIC SCHOOL ACADEMY, OR
7 GOVERNING BOARD OF THE NONPUBLIC SCHOOL SHALL NOT EMPLOY THAT
8 INDIVIDUAL IN ANY CAPACITY OR ALLOW THAT PERSON TO REGULARLY AND
9 CONTINUOUSLY WORK UNDER CONTRACT IN ANY OF ITS SCHOOLS.

10 (2) AS USED IN THIS SECTION, "LISTED OFFENSE" MEANS THAT TERM
11 AS DEFINED IN SECTION 2 OF THE SEX OFFENDERS REGISTRATION ACT, 1994
12 PA 295, MCL 28.722.

13 Enacting section 1. This amendatory act takes effect October
14 15, 2005.

15 Enacting section 2. This amendatory act does not take effect
16 unless all of the following bills of the 93rd Legislature are
17 enacted into law:

18 (a) House Bill No. 4928.

19 (b) House Bill No. 4929.

20 (c) House Bill No. 4930.

21